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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**30th meeting
Strasbourg, 19-20 September 2005**

**CONSIDERATION OF RESERVATIONS AND DECLARATIONS TO INTERNATIONAL TREATIES
APPLICABLE TO THE FIGHT AGAINST TERRORISM**

OBSERVATIONS SUBMITTED BY THE AUTHORITIES OF MALAYSIA

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Secretariat Memorandum
Prepared by the Directorate General of Legal Affairs



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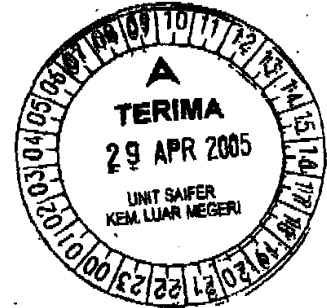
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WP 426/4

28 April 2005

Mr. Terry Davis
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Dear Mr. Davis,

1973 CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS, AND THE 1997 INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS

I refer to your letter dated 8 February 2005, addressed to the Honourable Dato' Seri Syed Hamid Albar, Foreign Minister of Malaysia, inviting Malaysia to withdraw our declarations to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the 1997 International Convention for the Suppression of Terrorist Bombings.

2. With regard to the request by Committee of Ministers of the Council of Europe's for Malaysia to withdraw our reservations on the said Conventions, we wish to reaffirm that the declarations made in our instruments of accesssion to the said Conventions merely clarify Malaysia's position, understanding and interpretation of the relevant provisions of the said Conventions. Such clarification, understanding and interpretation do not purport to exclude or modify the legal effect of the said Conventions. The declarations are in full compliance with the accepted norms and practises under international law.

3. In response to the Memorandum prepared by the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe, stating that Malaysia's reservations was deemed to violate the rules of due process, Malaysia would like to clarify the following:

- 3.1 Preventive detention provided for under Malaysia's security and preventive detention laws are permissible derogations of the rights against arbitrary arrest and detention without trial, on grounds recognised in the Federal Constitution and relevant international human rights instruments (such as in Article 29 (2) of the Universal Declaration of Human Rights and the related instruments constituting the International Bill of Human Rights);

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- 3.2 Adequate safeguards on preventive detention have been provided for in the Federal Constitution and the relevant laws, which are strictly enforced by the courts through the judicial review process. Furthermore, so long as these powers to arrest, search and detain are properly exercised, they are themselves the safeguards of freedom for the innocent;
- 3.3 National security and preventive detention laws as mentioned in the Declarations are valid laws passed by the Parliament of Malaysia pursuant to the relevant provisions of the Federal Constitution; and
- 3.4 An order for detention under the relevant national security and preventive detention laws does not place the detainee outside the protection of the law, as the detainee is always constitutionally entitled to the protection of the law. For instance, pursuant to the provisions contained in the Internal Security Act (1960) and the regulations made thereunder, the detainees are legally entitled, to, among others, challenge the order of detentions through various legal processes such as:
- i. the right of the detainee to make an application for *habeas corpus* to the judicial authorities in Malaysia;
 - ii. the right of the detainee to make representation against the order made by the Minister of Internal Security to an Advisory Board constituted by the King in accordance with the provision of the Federal Constitution; and
 - iii. the statutory review of the order made by the Minister of Internal Security, whereby the Internal Security Act (1960) provides that the order for detention made by the Minister shall, as long as it remains in force, be reviewed by the said Advisory Board, not less than once in every six months.

4. Malaysia therefore affirms that our declarations to the said Conventions will remain.

Thank you.

kind regards,


(DATO' MOHAMMAD KAMAL YAN YAHAYA)
 Undersecretary,
 Regional Cooperation, Social and Cultural Division
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